

AMENDED IN SENATE MAY 9, 2001

AMENDED IN SENATE APRIL 16, 2001

**SENATE BILL**

**No. 658**

**Introduced by Senator Escutia**

February 23, 2001

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An act to amend Sections 790.034 and 2071 of, *and to add Sections 2071.1 and 10082.3 to*, the Insurance Code, relating to insurance.

LEGISLATIVE COUNSEL'S DIGEST

SB 658, as amended, Escutia. Insurance.

Existing law provides for regulation of insurers by the Insurance Commissioner and requires that regulations adopted by the commissioner take into consideration settlement practices by classes of insurers. Existing law establishes a standard form of fire insurance policy for this state. Existing law prohibits a person from engaging in specified unfair methods of competition and deceptive acts or practices in the business of insurance.

This bill would require an insurer to provide an insured with certain information relating to unfair methods of competition and deceptive acts or practices in the business of insurance in its initial response to a claim. The bill would modify the standard form of fire insurance policy for this state relative to the obligations of the insured and insurer and to appraisals ~~and~~, adjusters, *and loss requirements*.

*The bill would also require that all conditions applicable to loss requirements, appraisals, and adjustors contained in standard form fire insurance policies apply to residential insurance policies and basic residential earthquake insurance policies.*

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~—yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Existing legal protections for insurance  
2 policyholders proved to be inadequate after the Northridge  
3 earthquake. The public requires additional safeguards against  
4 unfair claim settlement practices by insurance companies. It is the  
5 intent of the Legislature that the provisions of this act add basic  
6 consumer protections to those currently set forth in the Insurance  
7 Code and supporting regulations. *It is also the intent of the*  
8 *Legislature that the provisions of this act apply to all property*  
9 *insurance policies sold in the state, including, but not limited to,*  
10 *fire insurance policies, residential property insurance policies,*  
11 *basic residential earthquake insurance policies, and policies*  
12 *issued by the California Earthquake Authority.*

13 SEC. 2. Section 790.034 of the Insurance Code is amended to  
14 read:

15 790.034. Regulations adopted by the commissioner pursuant  
16 to this article that relate to the settlement of claims shall take into  
17 consideration settlement practices by classes of insurers.

18 ~~In its initial response to a claim, an insurer shall send to the~~  
19 ~~insured a legible reproduction of Section 790.03, in at least~~  
20 ~~12-point type, and a copy of the most current version of the Fair~~  
21 ~~Claims Settlement Practices Regulations as set forth in subchapter~~  
22 ~~7.5 of Chapter 5 of Title 10 of the California Code of Regulations.~~  
23 *Upon receiving notice of a claim, every insurer shall immediately,*  
24 *but no more than 15 calendar days after receipt of the claim,*  
25 *provide the insured with a legible reproduction of Section 790.03*  
26 *of the Insurance Code, in at least 12-point type and a written notice*  
27 *containing the following:*

28 {  
29 *“In addition to Section 790.03 of the Insurance Code provided,*  
30 *Fair Claims Settlement Practices Regulations govern how*  
31 *insurance claims must be processed in this state. These regulations*  
32 *are available on the Internet at [www.insurance.ca.gov](http://www.insurance.ca.gov). You may*  
33 *also obtain a copy of these regulations free of charge from your*  
34 *claims adjuster.”*  
35 {

Every insurer shall provide, whether requested orally or in writing by a claimant, a copy of the Fair Claims Settlement Practices Regulations as set forth in Sections 2695.5, 2695.7, and 2695.9 of subchapter 7.5 of Chapter 5 of Title 10 of the California Code of Regulations. These regulations shall be provided to the claimant within 15 calendar days of request.

SEC. 3. Section 2071 of the Insurance Code is amended to read:

2071. The following is adopted as the standard form of fire insurance policy for this state:

California Standard Form Fire Insurance Policy

No.

[Space for insertion of name of company or companies issuing the policy and other matter permitted to be stated at the head of the policy.]

[Space for listing amounts of insurance, rates and premiums for the basic coverages insured under the standard form of policy and for additional coverages or perils insured under endorsements attached.]

In consideration of the provisions and stipulations herein or added hereto and of \_\_\_\_\_ dollars premium this company, for the term of \_\_\_\_\_

from the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ } At 12:01 a.m.,  
to the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ } standard time,  
at location of property involved, to an amount not exceeding \_\_\_\_\_ dollars, does insure \_\_\_\_\_ and legal representatives, to the extent of the actual cash value of the property at the time of loss, but not exceeding the amount which it would cost to repair or replace the property with material of like kind and quality within a reasonable time after ~~such~~ the loss, without allowance for any increased cost of repair or reconstruction by reason of any ordinance or law regulating construction or repair, and without compensation for loss resulting from interruption of business or manufacture, nor in any event for more than the interest of the insured, against all LOSS BY FIRE, LIGHTNING AND BY REMOVAL FROM PREMISES ENDANGERED BY THE PERILS INSURED AGAINST IN THIS POLICY, EXCEPT AS HEREINAFTER PROVIDED, to the property described hereinafter while located

1 or contained as described in this policy, or pro rata for five days at  
2 each proper place to which any of the property shall necessarily be  
3 removed for preservation from the perils insured against in this  
4 policy, but not elsewhere.

5 Assignment of this policy shall not be valid except with the  
6 written consent of this company.

7 This policy is made and accepted subject to the foregoing  
8 provisions and stipulations and those hereinafter stated, which are  
9 hereby made a part of this policy, together with ~~such~~ any other  
10 provisions, stipulations and agreements as may be added hereto,  
11 as provided in this policy.

12 IN WITNESS WHEREOF, this company has executed and  
13 attested these presents; but this policy shall not be valid unless  
14 countersigned by the duly authorized agent of this company at

15  
16 Secretary. President.  
17 Countersigned this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_  
18 \_\_\_\_\_ Agent  
19

20 Concealment, fraud  
21

22 This entire policy shall be void if, whether before or after a loss,  
23 the insured has willfully concealed or misrepresented any material  
24 fact or circumstance concerning this insurance or the subject  
25 thereof, or the interest of the insured therein, or in case of any fraud  
26 or false swearing by the insured relating thereto.

27  
28 Uninsurable and excepted property  
29

30 This policy shall not cover accounts, bills, currency, deeds,  
31 evidences of debt, money or securities; nor, unless specifically  
32 named hereon in writing, bullion or manuscripts.

33  
34 Perils not included  
35

36 This company shall not be liable for loss by fire or other perils  
37 insured against in this policy caused, directly or indirectly, by: (a)  
38 enemy attack by armed forces, including action taken by military,  
39 naval or air forces in resisting an actual or an immediately  
40 impending enemy attack; (b) invasion; (c) insurrection; (d)



1 rebellion; (e) revolution; (f) civil war; (g) usurped power; (h) order  
2 of any civil authority except acts of destruction at the time of and  
3 for the purpose of preventing the spread of fire, provided that ~~such~~  
4 *the* fire did not originate from any of the perils excluded by this  
5 policy; (i) neglect of the insured to use all reasonable means to save  
6 and preserve the property at and after a loss, or when the property  
7 is endangered by fire in neighboring premises; (j) nor shall this  
8 company be liable for loss by theft.

9  
10 Other insurance

11  
12 Other insurance may be prohibited or the amount of insurance  
13 may be limited by endorsement attached hereto.

14  
15 Conditions suspending or restricting insurance

16  
17 Unless otherwise provided in writing added hereto this  
18 company shall not be liable for loss occurring (a) while the hazard  
19 is increased by any means within the control or knowledge of the  
20 insured; or (b) while a described building, whether intended for  
21 occupancy by owner or tenant, is vacant or unoccupied beyond a  
22 period of 60 consecutive days; or (c) as a result of explosion or riot,  
23 unless fire ~~ensue~~ *ensues*, and in that event for loss by fire only.

24  
25 Other perils or subjects

26  
27 Any other peril to be insured against or subject of insurance to  
28 be covered in this policy shall be by endorsement in writing hereon  
29 or added hereto.

30  
31 Added provisions

32  
33 The extent of the application of insurance under this policy and  
34 of the contribution to be made by this company in case of loss, and  
35 any other provision or agreement not inconsistent with the  
36 provisions of this policy, may be provided for in writing added  
37 hereto, but no provision may be waived except such as by the terms  
38 of this policy or by statute is subject to change.

## 1 Waiver provisions

2  
3 No permission affecting this insurance shall exist, or waiver of  
4 any provision be valid, unless granted herein or expressed in  
5 writing added hereto. No provision, stipulation or forfeiture shall  
6 be held to be waived by any requirement or proceeding on the part  
7 of this company relating to appraisal or to any examination  
8 provided for herein.  
9

## 10 Cancellation of policy

11  
12 This policy shall be canceled at any time at the request of the  
13 insured, in which case this company shall, upon demand and  
14 surrender of this policy, refund the excess of paid premium above  
15 the customary short rates for the expired time. This policy may be  
16 canceled at any time by this company by giving to the insured a  
17 five days' written notice of cancellation with or without tender of  
18 the excess of paid premium above the pro rata premium for the  
19 expired time, which excess, if not tendered, shall be refunded on  
20 demand. Notice of cancellation shall state that said excess  
21 premium (if not tendered) will be refunded on demand.  
22

## 23 Mortgagee interests and obligations

24  
25 If loss hereunder is made payable, in whole or in part, to a  
26 designated mortgagee not named herein as the insured, ~~such the~~  
27 interest in this policy may be canceled by giving to ~~such the~~  
28 mortgagee a 10 days' written notice of cancellation.

29 If the insured fails to render proof of loss ~~such the~~ mortgagee,  
30 upon notice, shall render proof of loss in the form herein specified  
31 within sixty (60) days thereafter and shall be subject to the  
32 provisions hereof relating to appraisal and time of payment and of  
33 bringing suit. If this company shall claim that no liability existed  
34 as to the mortgagor or owner, it shall, to the extent of payment of  
35 loss to the mortgagee, be subrogated to all the mortgagee's rights  
36 of recovery, but without impairing mortgagee's right to sue; or it  
37 may pay off the mortgage debt and require an assignment thereof  
38 and of the mortgage. Other provisions relating to the interests and  
39 obligations of ~~such the~~ mortgagee may be added hereto by  
40 agreement in writing.



Pro rata liability

This company shall not be liable for a greater proportion of any loss than the amount hereby insured shall bear to the whole insurance covering the property against the peril involved, whether collectible or not.

Requirements in case loss occurs

The insured shall give written notice to this company of any loss without unnecessary delay, protect the property from further damage, forthwith separate the damaged and undamaged personal property, put it in the best possible order, furnish a complete inventory of the destroyed, damaged and undamaged property, showing in detail quantities, costs, actual cash value and amount of loss claimed; and within 60 days after the loss, unless ~~such~~ *the* time is extended in writing by this company, the insured shall render to this company a proof of loss, signed and sworn to by the insured, stating the knowledge and belief of the insured as to the following: the time and origin of the loss, the interest of the insured and of all others in the property, the actual cash value of each item thereof and the amount of loss thereto, all encumbrances thereon, all other contracts of insurance, whether valid or not, covering any of said property, any changes in the title, use, occupation, location, possession or exposures of said property since the issuing of this policy, by whom and for what purpose any building herein described and the several parts thereof were occupied at the time of loss and whether or not it then stood on leased ground, and shall furnish a copy of all the descriptions and schedules in all policies and, if required and obtainable, verified plans and specifications of any building, fixtures or machinery destroyed or damaged. ~~An examination under oath may only be conducted upon reasonable notice at a reasonably convenient time and place and for a reasonable length of time, not to exceed eight hours. The scope of the examination shall be limited to information that is relevant and necessary to process or determine the claim. This company shall notify the insured in advance that the insured may tape record the examination and be represented by counsel. The applicable provisions of the Evidence Code and the Code of Civil Procedure relating to depositions shall govern an examination under oath.~~

~~Insureds enjoy all statutory and constitutional protections and privileges when submitting to examinations under oath. All evidentiary objections, except as to the form of a questions, are preserved. This company will provide a copy of the transcript of the examination under oath to the insured free of charge within two weeks of completion of the examination proceeding.~~

~~The insured, as often as may be reasonably required, shall produce for examination all that remains of any property herein described, and all relevant books of account, bills, invoices, or other vouchers, or certified copies thereof if the originals are lost, at a reasonable time and place and shall permit copies thereof to be made. The insured is not obligated to produce copies of privileged materials including tax returns and shall be informed of that fact by this company.~~

~~Upon a request from an insured, this company will apprise that insured of the status of the claim investigation, and provide copies of all pertinent information including, but not limited to, repair or replacement estimates, appraisals, and other claim related documents, except where such information evidences fraud by the insured which may be concealed by this company until the investigation is complete and a formal denial has been issued, and except those documents that are specifically prohibited by laws on medical privacy from being disclosed to the insured.~~

~~If the examination under oath is conducted by an attorney in advance of litigation, the insurer shall pay the reasonable cost of an attorney retained by the insured relative to the examination.~~

*The insured, as often as may be reasonably required and subject to the provisions of Section 2071.1, shall exhibit to any person designated by this company all that remains of any property herein described, and submit to examinations under oath by any person named by this company, and subscribe the same; and, as often as may be reasonably required, shall produce for examinations all books of account, bills, invoices, and other vouchers, or certified copies thereof if the originals be lost, at any reasonable time and place as may be designated by this company or its representative, and shall permit extracts and copies thereof to be made. The insurer shall inform the insured that tax returns are privileged against disclosure under applicable law but may be necessary to process or determine the claim.*



*The insurer shall notify every claimant that they may obtain, upon request, copies of claim-related documents. For purposes of the section, “claim-related documents” means all repair and replacement estimates and bids, appraisals, scopes of work, drawings, plans, reports, consultant’s findings, and other valuation, measurement and loss adjustment calculations pertaining to the claim. For purposes of this section, attorney work product and attorney-client privileged matters are excluded from this definition. Upon a request from an insured, the company shall provide the insured with copies of all claim-related documents except in instances in which the document evidences fraud by the insured or contains medically privileged information. Nothing in this section is intended to affect existing litigation discovery rights.*

#### Appraisal

*In case the insured and this company shall fail to agree as to the actual cash value or the amount of loss, then, on the written request of either, each shall select a competent and disinterested appraiser and notify the other of the appraiser selected within 20 days of such request. However, the insured may decline to select an appraiser. ~~If cases in which appraisers are required to be selected, the appraisers shall first~~ selected within 20 days of the request. In the event either the insurer or the insured declines the request, neither party may compel appraisal. Where the request is accepted, the appraisers shall first select a competent and disinterested umpire; and failing for 15 days to agree upon ~~such~~ the umpire, then, on request of the insured or this company, ~~such~~ the umpire shall be selected by a judge of a court of record in the state in which the property covered is located. The appraisers shall then appraise the loss, stating separately actual cash value and loss to each item; and, failing to agree, shall submit their differences, only, to the umpire. An award in writing, so itemized, of any two when filed with this company shall determine the amount of actual cash value and loss. Each appraiser shall be paid by the party selecting him or her and the expenses of appraisal and umpire shall be paid by the parties equally.*

## Adjusters

~~If the company assigns a third or subsequent adjuster to the same claim within a six-month period, the insured shall be provided with a summary of the status of the claim at the time of that assignment.~~

*If, within a six-month period, the company assigns a third or subsequent adjuster to be primarily responsible for a claim, the insurer, in a timely manner, shall provide the insured with a written status report, in summary form, of the significant activities and agreements relating to the claim. For purposes of this section, “significant activities” means any decisions or actions that are relevant to the disposition of a claim, including, but not limited to, the amount of losses to structures or contents, the retention or consultation of design or construction professionals, the amount of coverage for losses to structures or contents and all items of dispute.*

## Company’s options

It shall be optional with this company to take all, or any part, of the property at the agreed or appraised value, and also to repair, rebuild or replace the property destroyed or damaged with other of like kind and quality within a reasonable time, on giving notice of its intention so to do within 30 days after the receipt of the proof of loss herein required.

## Abandonment

There can be no abandonment to this company of any property.

## When loss payable

The amount of loss for which this company may be liable shall be payable 60 days after proof of loss, as herein provided, is received by this company and ascertainment of the loss is made either by agreement between the insured and this company expressed in writing or by the filing with this company of an award as herein provided.

Suit

No suit or action on this policy for the recovery of any claim shall be sustainable in any court of law or equity unless all the requirements of this policy shall have been complied with, and unless commenced within 12 months next after inception of the loss.

Subrogation

This company may require from the insured an assignment of all right of recovery against any party for loss to the extent that payment therefor is made by this company.

*SEC. 4. Section 2071.1 is added to the Insurance Code, to read:*

*2071.1. This section applies to an examination of an insured under oath pursuant to Section 2071 labeled "Requirements in case loss occurs" and other relevant provisions of that section. This section shall also apply to any policy that insures property and contains a provision for examining an insured under oath.*

*The following are among the rights of each insured who is requested to submit to an examination under oath:*

*(a) An insurer may conduct an examination under oath only to obtain information that is relevant and reasonably necessary to process or determine the claim.*

*(b) An examination under oath may only be conducted upon reasonable notice, at a reasonably convenient place and for a reasonable length of time.*

*(c) The insured may be represented by counsel and may record the examination proceedings in their entirety.*

*(d) The insurer shall notify the insured that, upon request and free of charge, it will provide the insured with a copy of the transcript of the proceedings and a tape of the proceedings, if one exists. Where an insured requests a copy of the transcript, the tape, or both, of their examination under oath, the insurer shall provide it within 10 calendar days of receipt by the insurer or its counsel of the transcript, the tape, or both. An insured may correct transcription errors so the transcript accurately reflects the testimony under oath.*

1 (e) In an examination under oath, an insured may assert any  
2 objection that can be made in a deposition under state or federal  
3 law.

4 (f) If the insurer decides to have an examination under oath  
5 conducted by an attorney, the insurer shall pay the reasonable cost  
6 of an attorney retained by the insured relative to the examination.  
7 The insurer shall be entitled to seek reimbursement of this cost only  
8 where it is established that the insured submitted an intentionally  
9 fraudulent claim. Where an insurer provides an insured with  
10 written questions to be answered under penalty of perjury in place  
11 of an examination under oath, the insurer is not obligated to pay  
12 for an attorney to assist the insured in responding.

13 SEC. 5. Section 10082.3 is added to the Insurance Code, to  
14 read:

15 10082.3. Notwithstanding any other provision of law, all  
16 insurers in this state offering residential property insurance  
17 policies pursuant to this chapter or basic residential earthquake  
18 insurance pursuant to Chapter 8.6 (commencing with Section  
19 10089.5) shall comply with the following regarding loss  
20 requirements, appraisals, and adjusters.{C}Requirements in case  
21 loss occurs

22 The insured shall give written notice to this company of any loss  
23 without unnecessary delay, protect the property from further  
24 damage, forthwith separate the damaged and undamaged  
25 personal property, put it in the best possible order, furnish a  
26 complete inventory of the destroyed, damaged and undamaged  
27 property, showing in detail quantities, costs, actual cash value and  
28 amount of loss claimed; and within 60 days after the loss, unless  
29 the time is extended in writing by this company, the insured shall  
30 render to this company a proof of loss, signed and sworn to by the  
31 insured, stating the knowledge and belief of the insured as to the  
32 following: the time and origin of the loss, the interest of the insured  
33 and of all others in the property, the actual cash value of each item  
34 thereof and the amount of loss thereto, all encumbrances thereon,  
35 all other contracts of insurance, whether valid or not, covering any  
36 of said property, any changes in the title, use, occupation, location,  
37 possession or exposures of said property since the issuing of this  
38 policy, by whom and for what purpose any building herein  
39 described and the several parts thereof were occupied at the time  
40 of loss and whether or not it then stood on leased ground, and shall



1 furnish a copy of all the descriptions and schedules in all policies  
2 and, if required and obtainable, verified plans and specifications  
3 of any building, fixtures or machinery destroyed or damaged. The  
4 insured, as often as may be reasonably required and subject to the  
5 provisions of Section 2071.1, shall exhibit to any person  
6 designated by this company all that remains of any property herein  
7 described, and submit to examinations under oath by any person  
8 named by this company, and subscribe the same; and, as often as  
9 may be reasonably required, shall produce for examination all  
10 books of account, bills, invoices and other vouchers, or certified  
11 copies thereof if originals be lost, at such reasonable time and  
12 place as may be designated by this company or its representative,  
13 and shall permit extracts and copies thereof to be made. The  
14 insured, as often as may be reasonably required, shall exhibit to  
15 any person designated by this company all that remains of any  
16 property herein described, and submit to examinations under oath  
17 by any person named by this company, and subscribe the same;  
18 and, as often as may be reasonably required, shall produce for  
19 examinations all books of account, bills, invoices, and other  
20 vouchers, or certified copies thereof if the originals be lost, at any  
21 reasonable time and place as may be designated by this company  
22 or its representative, and shall permit extracts and copies thereof  
23 to be made. The insurer shall inform the insured that tax returns  
24 are privileged against disclosure under applicable state law but  
25 may be necessary to process or determine the claim.

26 The insurer shall notify every claimant that they may obtain,  
27 upon request, copies of claim-related documents. For purposes of  
28 the section, “claim-related documents” means all repair and  
29 replacement estimates and bids, appraisals, scopes of work,  
30 drawings, plans, reports, consultant’s findings, and other  
31 valuation, measurement and loss adjustment calculations  
32 pertaining to the claim. For purposes of this section, attorney work  
33 product and attorney-client privileged matters are excluded from  
34 this definition. Upon a request from an insured, the company will  
35 provide the insured with copies of all claim-related documents  
36 except in instances in which the document evidences fraud by the  
37 insured or contains medically privileged information. Nothing in  
38 this section is intended to affect existing litigation discovery  
39 rights.{C}Appraisal



1     *In case the insured and this company shall fail to agree as to the*  
2 *actual cash value or the amount of loss, then, on the written request*  
3 *of either, each shall select a competent and disinterested appraiser*  
4 *and notify the other of the appraiser selected within 20 days of the*  
5 *request. In the event either the insurer or the insured declines the*  
6 *request, neither party may compel appraisal. Where the requested*  
7 *is accepted, the appraisers shall first select a competent and*  
8 *disinterested umpire; and failing for 15 days to agree upon the*  
9 *umpire, then, on request of the insured or this company, the umpire*  
10 *shall be selected by a judge of a court of record in the state in which*  
11 *the property covered is located. The appraisers shall then appraise*  
12 *the loss, stating separately actual cash value and loss to each item;*  
13 *and, failing to agree, shall submit their differences, only, to the*  
14 *umpire. An award in writing, so itemized, of any two when filed*  
15 *with this company shall determine the amount of actual cash value*  
16 *and loss. Each appraiser shall be paid by the party selecting him*  
17 *or her and the expenses of appraisal and umpire shall be paid by*  
18 *the parties equally.*{C}Adjusters

19     *If, within a six-month period, the company assigns a third or*  
20 *subsequent adjuster to be primarily responsible for a claim, the*  
21 *insurer, in a timely manner, shall provide the insured with a written*  
22 *status report on the significant activities and agreements relating*  
23 *to the claim. For purposes of this section, "significant activities"*  
24 *means any decisions or actions that are relevant to the disposition*  
25 *of a claim, including, but not limited to, the amount of losses to*  
26 *structures or contents, the retention or consultation of design or*  
27 *construction professionals, the amount of coverage for losses to*  
28 *structures or contents and all items of dispute.*  
29